



Joe@2Hurt2Work.com  
Telephone: 504.527.6433  
Facsimile: 504.527.6450

615 Baronne Street, Suite 300  
New Orleans, Louisiana 70113  
[www.2Hurt2Work.com](http://www.2Hurt2Work.com)

January 24, 2019

Via E-mail

Honorable Nakisha Ervin-Knott  
Judge, Division D  
Civil District Court for the  
Parish of Orleans  
421 Loyola Ave., Room 412  
New Orleans, LA 70112

Re: Anne Lowenburg, et al. vs. Sewerage & Water Board of New Orleans, CDC No. 2016-621 Div. D  
Our File No.: 66003

Dear Judge Ervin-Knott,

As you are aware, the Lowenburg Group C Plaintiffs have filed a Motion for Contempt and Adverse Inference relative to Sewerage & Water Board of New Orleans' ("SWB") alleged failure to produce piezometer data regarding the Jefferson II phase of the Uptown SELA construction. A preliminary discussion of the issues surrounding this Motion was held in chambers during the Pre-Trial Conference. The Court agreed that SWB could file an Opposition to the Motion by today. In preparing the opposition on behalf of SWB and noting that pertinent events took place prior to my enrollment as counsel for SWB, I deemed it necessary to spend some time trying to get a full understanding of the discovery history of this litigation. As an officer of the court, I am compelled to advise the Court, and Plaintiffs' counsel, of my findings.

A Discovery Order was entered following a May 2016 Status Conference, while the SELA cases were in federal court. The Discovery Order required the parties to establish a repository for the central storage of documents related to the litigation. Professional Shorthand Reporters, Inc. ("PSR") was chosen as the repository for the SELA cases.

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The federal court Discovery Order required SWB to deposit documents and data related to potential "dewatering", *inter alia*. SWB did not have any documents concerning the Uptown SELA Construction in its possession. Accordingly, SWB contacted Quick & Associates, one of its vendors, to retrieve all Uptown SELA related data, including but not limited to, pre-construction photographs, hotline complaints and geotechnical data for all 7 Projects. Quick & Associates provided the requested information to the SWB. Subsequently and pursuant to the federal court Discovery Order, SWB uploaded all of the documents and data it received from Quick & Associates to the repository. This submission included the piezometer, inclinometer and survey data for the 7 SELA Projects, including Jefferson II. SWB and its attorneys believed that all the documents provided by Quick & Associates was stored in the PSR Repository.

On Wednesday, January 23, 2019, while conducting further investigation into the prior discovery history, the undersigned discovered that SWB and its attorneys' belief regarding the placement of all geotechnical data relative to Jefferson II in the repository was mistaken. The PSR Repository shows inclinometer, piezometer and survey data for 4 phases (Claiborne I & II, Jefferson I and Napoleon III) of construction; however, for Jefferson II, Napoleon II and Louisiana Avenue, only the survey data was present. The piezometer and inclinometer data for these latter phases were missing. Efforts were then undertaken to determine why the data was not where it was presumed to be.

The search for an explanation was to no avail. It was learned, however, that SWB's attorneys are in possession of piezometer and inclinometer data from Quick & Associates through various dates in 2016, and that this geotechnical data has been shared with defense experts, Dr. Dave Sykora and Dr. Bob Bailey, for their analysis and consideration.<sup>1</sup> SWB and its attorneys can only assume that the Jefferson II, Napoleon II and Louisiana geotechnical data was inadvertently omitted from SWB's transmission of voluminous amounts of documents to the PSR Repository.

SWB requests a Conference Call with the Court and Counsel expeditiously to discuss the matter further.

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<sup>1</sup> SWB is in the process of forwarding the piezometer and inclinometer data for Jefferson II in its possession to Counsel for Plaintiffs.

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Sincerely,

  
**Joseph B. Morton, III**  
Of Counsel

**JBM**

**Cc:**    Randall A. Smith, Esq.  
          Sarah A. Lowman, Esq.  
          Mary Nell Bennett, Esq.